

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**GARY AUSBORN,**

**Plaintiff,**

**vs.**

**No. 09-CV-00105 ACT/RLP**

**BRIAN LEE APFEL and  
ANDRUS TRANSPORTATION SERVICES, INC.,**

**Defendants.**

**ORDER**

**THIS MATTER** comes before the Court on the Motion of Defendant Apfel for Protective Order directing that his deposition not be taken. (Docket No. 60). The Court, having reviewed the Motion, Response and Reply filed by the parties, and having conducted a Telephone Hearing on September 22, 2009,

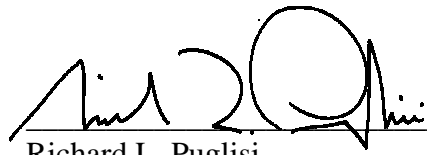
**FINDS** that the Motion is not well taken.

**IT IS HEREBY ORDERED** that Defendant's Motion for Protective Order be and hereby is **DENIED**.

**IT IS FURTHER ORDERED** that Plaintiff's Counsel, Phillip C. Gaddy, is awarded the sum of \$1,500.00 for expenses incurred and time unnecessarily expended due to the failure to properly and timely notify him of Defendant's non-appearance at his properly scheduled deposition. Payment of this amount shall be made to Mr. Gaddy on or before October 6, 2009.

**IT IS FURTHER ORDERED** that Defendant Apfel shall appear at his deposition in Albuquerque, New Mexico on October 5, 2009.

**IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read 'Richard L. Puglisi', is written over a horizontal line.

Richard L. Puglisi  
United States Magistrate Judge